

AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 696

Introduced by Senator Wright

February 27, 2009

An act to add Sections 40440.12 and 40440.13 to the Health and Safety Code, relating to air quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 696, as amended, Wright. Air quality: CEQA exemptions: emission reduction credits.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

Under existing law, every air pollution control district or air quality management district in a federal nonattainment area for any national ambient air quality standard is required to establish by regulation, a system by which all reductions in emissions of air contaminants that are to be used to offset certain future increases in the emission of air

contaminants are banked prior to use. Pursuant to this requirement the South Coast Air Quality Management District (district) promulgated various rules establishing offset exemptions, providing Priority Reserve offset credits, and creating or tracking credits used for offset exemption or Priority Reserve projects. In *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792), the superior court found the promulgation of certain of these district rules to be in violation of CEQA.

This bill would exempt from the requirements of CEQA the adoption and implementation of specified district rules, and the creation or the use of specified credits pursuant to district rules by a thermal powerplant when certain conditions are satisfied. Because a lead agency would be required to determine whether the use of the credits qualifies for an exemption, this bill would impose a state-mandated local program.

(2) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to adopt, on a biennial basis, an integrated energy policy report to include an assessment and a forecast of the need for resource additions, efficiency, and conservation that considers all aspects of energy industries and markets.

This bill would require the Energy Commission to perform a needs assessment for a thermal powerplant proposed to be located in the district.

(3) This bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

1 (1) Because of the superior court decision in Natural Resources
2 Defense Council v. South Coast Air Quality Management District
3 (Super. Ct. Los Angeles County, 2007, No. BS 110792) holding
4 the South Coast Air Quality Management District (district) violated
5 the requirements of the California Environmental Quality Act
6 (CEQA) (Division 13 (commencing with Section 21000) of the
7 Public Resources Code) in the promulgation of certain district
8 rules, the district is unable to issue over a thousand pending permits
9 that rely on the district's internal offset bank to offset emissions.

10 (2) The superior court decision also required the district to set
11 aside several thousand permits that were previously issued in
12 reliance on the district's internal offset bank. These permits have
13 been subject to analysis performed pursuant to CEQA that the lead
14 agency has deemed appropriate.

15 (3) If prompt legislative action is not taken to correct this
16 situation, projects will be stopped from going forward or frozen
17 in place, representing significant losses to the economy, as well
18 as numerous well-paying jobs. The impact of approved projects
19 not going forward will dramatically impede any economic recovery
20 in southern California and contribute to another state deficit as a
21 result of lower tax revenues.

22 (4) Affected projects include equipment replacement to reduce
23 air emissions, plus projects for essential public services such as
24 hospitals, schools, landfills, sewage treatment plants, renewable
25 energy projects, and small sources, including small businesses that
26 are unable to locate or afford credits on the open market. With
27 time, many other similar projects will have to be placed on hold,
28 or have their application withdrawn.

29 (5) The superior court decision also prohibits the district from
30 issuing air credits from its Priority Reserve to thermal powerplants
31 that are needed to meet the current and future projected electricity
32 needs of the region and to prevent blackouts during peak demand
33 periods.

34 (6) Without corrective legislation, the district cannot improve
35 air quality by allowing the existing older and higher emitting and
36 less efficient powerplants to be replaced with new cleaner and
37 more efficient powerplants. Fifty percent of available total power
38 in the region is generated from powerplants that are 40 years or
39 older.

(7) Failure to correct this problem will mean the district cannot help meet the mandates set forth in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) if it cannot issue permits to provide necessary peaking power to support increased reliance on renewable energy as will be required by state efforts to reduce greenhouse gases.

(b) It is therefore necessary that legislation be enacted to allow the district to resume issuing permits and to abrogate the superior court decision in *Natural Resources Defense Council v. South Coast Air Quality Management District* (Super. Ct. Los Angeles County, 2007, No. BS 110792).

SEC. 2. Section 40440.12 is added to the Health and Safety Code, to read:

40440.12. The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to either of the following:

(a) (1) The adoption or implementation of rules by the south coast district establishing offset exemptions, providing Priority Reserve credits, or creating or tracking the credits used for offset exemptions or Priority Reserve projects, if the discretionary projects that use those exemptions or credits are subject to this division or are exempt from this division pursuant to a categorical or statutory exemption and all of the following are satisfied:

(A) South coast district rule requires the use of the best available control technology, as defined in Section 40405, and air quality modeling to ensure the source will not cause a violation, or make significantly worse an existing violation, of any ambient air quality standards as defined in district rule 1303, unless exempted from modeling pursuant to district rule 1304, as amended June 14, 1996, for each new, relocated, or modified source with an emissions increase of one pound per day or greater of any air contaminant.

(B) South coast district rule prohibits the construction of any new, relocated, or modified permitted unit if the emissions of any toxic air contaminant, as listed by the district board, exceed a cumulative increase in maximum individual cancer risk at any receptor location of greater than one in one million if the permitted unit is constructed without best available control technology for toxic air contaminants, or greater than 10 in one million if the permitted unit is constructed with best available control technology

1 for toxic air contaminants or exceeds a chronic or acute noncancer
2 health effect hazard index of 1.0.

3 (C) The south coast district accounts for the use of offset credits
4 pursuant to this subdivision as part of the district's state
5 implementation plan submissions and demonstrates that the use
6 of the offset credits will not interfere with attainment or
7 maintenance of ambient air quality standards.

8 (D) South coast district rules 1304, 1309.1, and 1315, as
9 specified in this subdivision, have been submitted to the United
10 States Environmental Protection Agency, and have not been
11 disapproved by that agency.

12 (2) The exemption provided in this subdivision applies to offset
13 exemptions pursuant to south coast district rule 1304, as amended
14 June 14, 1996, Priority Reserve credits pursuant to south coast
15 district rule 1309.1, as amended May 3, 2002, and the adoption
16 and implementation of south coast district rule 1315, as adopted
17 September 6, 2006, and readopted August 3, 2007, *including any*
18 *amendments to those rules required by the United States*
19 *Environmental Protection Agency for approval.*

20 (3) Upon the satisfaction of conditions specified in ~~subdivision~~
21 ~~paragraph (1), the exemption provided in this paragraph~~
22 *subdivision applies to all action taken pursuant to the south coast*
23 *district rules specified in paragraph (2) on and after September 6,*
24 *2006.*

25 (4) *The holding in Natural Resources Defense Council v. South*
26 *Coast Air Quality Management District (Super. Ct. Los Angeles*
27 *County, 2007, No. BS 110792) is hereby abrogated.*

28 (5) *This subdivision does not provide any exemption from the*
29 *California Environmental Quality Act (Division 13 (commencing*
30 *with Section 21000) of the Public Resources Code) for the issuance*
31 *of any permit.*

32 (b) The adoption of south coast district rule 1309.1 and the
33 creation or use of Priority Reserve credits pursuant to south coast
34 district rule 1309.1, as amended August 3, 2007, *including any*
35 *amendments to those rules required by the United States*
36 *Environmental Protection Agency for approval*, by a thermal
37 powerplant that is subject to this division or to Chapter 6
38 (commencing with Section 25500) of Division 15 of the Public
39 Resources Code if all of the following requirements are satisfied:

1 (1) South coast district rules include the requirements and
2 prohibitions specified in subparagraphs (A) and (B) of paragraph
3 (1) of subdivision (a).

4 (2) The thermal powerplant emissions comply with the
5 requirements for best available control technology, air quality
6 modeling impacts, toxic impacts, and emissions levels as specified
7 in south coast district rule 1309.1, as amended August 3, 2007.

8 (3) The thermal powerplant has entered into long-term contracts
9 with Southern California Edison Company, San Diego Gas and
10 Electric Company, or the State of California to provide electricity
11 in southern California, or is a powerplant owned by a local publicly
12 owned utility that is designed and constructed not to exceed that
13 utility's native demand load projections, or the use of the credit is
14 otherwise allowed by the south coast district board pursuant to
15 south coast district rule 1309.1.

16 (4) The south coast district accounts for the thermal powerplants'
17 use of Priority Reserve credits pursuant to this subdivision as part
18 of its state implementation plan submissions and demonstrates that
19 the use will not interfere with attainment or maintenance of ambient
20 air quality standards.

21 (5) South coast district rule 1309.1, as amended August 3, 2007,
22 and south coast district rule 1315, as adopted September 6, 2006,
23 and readopted August 3, 2007, have been submitted to the United
24 States Environmental Protection Agency and have not been
25 disapproved by that agency.

26 (6) The State Energy Resources Conservation and Development
27 Commission has conducted a needs assessment that has determined
28 that the thermal powerplant is necessary to meet future energy
29 needs in southern California or the south coast district, and has
30 determined it is necessary for the thermal powerplant to be located
31 in the south coast district.

32 (7) (A) The thermal powerplant pays a mitigation fee for the
33 Priority Reserve offset credits obtained that shall be at a minimum
34 the amount set forth in south coast district rule 1309.1, as amended
35 August 3, 2007.

36 (B) The south coast district board may by amendment to that
37 rule, after a public hearing, increase the fees without affecting the
38 applicability of this paragraph.

39 (C) The south coast district shall, to the extent technically and
40 economically feasible, use the mitigation fees to mitigate emissions

1 of the relevant pollutants or its precursors in the area impacted by
2 emissions from the thermal powerplant, with a minimum of
3 one-third to be used for installation of renewable or alternative
4 sources of energy. Up to 10 percent may be used by the district
5 for administration of the mitigation program.

6 (8) *This subdivision does not provide any exemption from the*
7 *California Environmental Quality Act (Division 13 (commencing*
8 *with Section 21000) of the Public Resources Code) or from Chapter*
9 *6 (commencing with Section 25500) of Division 15 of the Public*
10 *Resources Code, for the issuance of any permit, license, or*
11 *certification.*

12 SEC. 3. Section 40440.13 is added to the Health and Safety
13 Code, to read:

14 40440.13. (a) The State Energy Resources Conservation and
15 Development Commission shall perform a needs assessment
16 considering the issue specified in paragraph (6) of subdivision (b)
17 of Section 40440.12 for a thermal powerplant proposed to be
18 located in the south coast district, whether or not the thermal
19 powerplant is subject to Chapter 6 (commencing with Section
20 25500) of Division 15 of the Public Resources Code.

21 (b) (1) For the purposes of this section, “thermal powerplant”
22 means any stationary or floating electrical generating facility using
23 any source of thermal energy and any facilities appurtenant to the
24 facility. Exploratory, development, and production wells, resource
25 transmission lines, and other related facilities used in connection
26 with a geothermal exploratory project or a geothermal field
27 development project are not appurtenant facilities for the purposes
28 of this section.

29 (2) “Thermal powerplant” does not include any exclusively
30 wind, hydroelectric, or solar photovoltaic electrical generating
31 facility.

32 SEC. 4. The Legislature finds and declares that a special law
33 is necessary and that a general law cannot be made applicable
34 within the meaning of Section 16 of Article IV of the California
35 Constitution because of unique circumstances concerning the South
36 Coast Air Quality Management District.

37 SEC. 5. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 a local agency or school district has the authority to levy service
40 charges, fees, or assessments sufficient to pay for the program or

1 level of service mandated by this act, within the meaning of Section
2 17556 of the Government Code.

3 SEC. 6. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety within
5 the meaning of Article IV of the Constitution and shall go into
6 immediate effect. The facts constituting the necessity are:

7 Due to the court decision in Natural Resources Defense Council
8 v. South Coast Air Quality Management District (Super. Ct. Los
9 Angeles County, 2007, No. BS 110792), the South Coast Air
10 Quality Management District is unable to issue over a thousand
11 pending permits that are either exempt from offset requirements
12 or qualified to use offset credits from the district's Priority Reserve
13 and is required to set aside thousands of permits already issued;
14 therefore it is necessary for this measure to take effect immediately
15 to allow the district to issue permits in an expeditious manner and
16 to validate previously issued permits called into question by the
17 superior court's decision.